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**Defendant.**

(Hon. Karl Elledge)

## INTRODUCTION

## STATEMENT OF FACTS

**Numbers 1 – 4. Defendant affirms venue, parties and letter Plaintiff sent to Defendant.**

1 Number 5. Defendant denies that Plaintiff requested removal of objects in letter because  
2 the objects place a heavier burden on the wire panels and supporting poles than they were  
designed to bear; however, the letter states otherwise (see Exhibit A).

3 Number 6. Defendant affirms that she agreed to remove objects damaging the fence (see  
4 Exhibit B).

5 Number 7. Defendant denies that Plaintiff purchased materials and repaired the fence;  
6 however, Plaintiff has a receipt for materials and photographs of intact, repaired fence (see  
Exhibit C and Exhibit D).

7 Number 8. Defendant denies that she and her ex-husband altered and began damaging the  
8 fence; however, Plaintiff has photographs of objects leaning against, wedged under it and  
attached to fence (see Exhibit E).

9 Number 9. Defendant denies that her ex-husband's threats and violent actions occurred;  
10 however, Plaintiff called 911 and filed a complaint with the Bisbee Police Department (see  
11 Exhibit F).

12 Number 10. Defendant denies that her actions are interfering with Plaintiff's use and  
13 enjoyment of her land in a manner that is substantial and unreasonable; however, as  
14 described in the above paragraphs and shown in the above Exhibits it is apparent this is  
false.

15 Number 11. Defendant denies her actions are intentional; however, Defendant's agreement  
16 and cooperation in March 2018, followed by her resumption of damaging actions 7 months  
later show she is acting with knowledge and purpose.

17 The following facts are also material to this case:

18 Plaintiff hired Bisbee Land Surveying after this civil suit was filed to determine Plaintiff's  
19 property lines (see Exhibit G). The plat map and parcel detail show that the boundary fence  
20 is completely within Plaintiff's property line (see Exhibit H and Exhibit I). Exhibit J shows  
21 the survey markers at the front and back of Plaintiff's property line in relation to the  
boundary fence.

## 22 ARGUMENT

23 Defendant is intentionally interfering with the use and enjoyment of Plaintiff's property by  
24 altering and damaging the wire fence separating Plaintiff and Defendants properties and  
25 preventing Plaintiff from preserving the fence. Although the fence is completely within  
26 Plaintiff's property line, its existence creates entirely enclosed properties for both Plaintiff and  
27 Defendant and therefore is used by, and benefits, both parties.  
28

1 In the absence of Arizona state statutes, Cochise County ordinances, and City of Bisbee  
2 ordinances addressing boundary fence law, mutual ownership and maintenance responsibilities  
3 are supported by a "law of the land" argument. Thirty-nine states have statutes providing for  
4 joint expense and maintenance of division fences. In addition, private owners of adjoining  
5 properties are presumed to benefit equally from boundary fences. Under this presumption,  
6 adjoining property owners are equally responsible for constructing, maintaining and replacing  
7 boundary fences. The shared nature of a boundary fence implies that no one neighbor can  
8 remove or modify an existing fence without the other neighbor's permission.  
9

10 CONCLUSION

11 As demonstrated in the above statement of facts, there exists no disputed genuine issue of  
12 material fact between the parties requiring a trial to resolve, and the moving party is entitled to  
13 judgment as a matter of law.  
14

15 I declare under penalty of perjury under the laws of the State of Arizona that the foregoing  
16 is true and correct.

17 DATED this 11th day of January, 2018.  
18  
19

20 By:   
21 LYNELLE GAE  
22 Plaintiff

23 Copies of the foregoing  
24 Delivered/mailed this  
11 day of January, 2019 to:

25 Hon. Karl Elledge  
26 Cochise Co. Superior Court Division IV  
27 100 Colonia de Salud  
28 Sierra Vista, AZ 85635

Yolanda Perez Moots  
205 Pittsburg Avenue  
Bisbee, AZ 85603  
Defendant

# **EXHIBIT A**

February 26, 2018

Ms. Yolanda Perez Moots  
205 Pittsburg Avenue  
Bisbee, AZ 85603

COPY

Dear Ms. Moots,

As you know, part of the wire fence separating our yards is broken and needs repair. I am writing to notify you of my intent to repair the fence and restore it to its original form and structure to match the rest of the wire fence separating our properties (see enclosed photographs of the original existing fence). The original wire fencing extends approximately 79 feet as measured from the front property line toward the back property line to the broken part. The part that needs repair and restoration extends from that point approximately 20 feet farther to the back of the property line.

I propose the installation of new "vintage style looped wire woven fencing" (see enclosed fact sheets) over the existing old wire fencing as measured from the back property line forward to approximately 20 feet, which will cover and mend the broken parts, and attaching it to the four supporting posts in that 20 foot measured area.

In order to make these repairs and restore the fence to its original form and structure the following must be removed from the old wire fencing:

- 1) any and all objects fastened to or attached to the existing wire fence including but not limited to: pieces of metal, pieces of wood, mesh or screen, household items or furniture, and any other wire panels or structures,
- 2) any and all objects leaning against the existing wire fence including but not limited to: pieces of metal, pieces of wood, mesh or screen, household items or furniture, bricks, concrete blocks and rocks,
- 3) any and all items wedged against or under the existing wire fence including but not limited to: pieces of metal, pieces of wood, household items or furniture, bricks, concrete blocks and rocks.

The fence is damaged by objects leaned on it, attached to it, and wedged underneath it. These objects place a heavier burden on the wire panels and supporting posts than they were designed to bear.

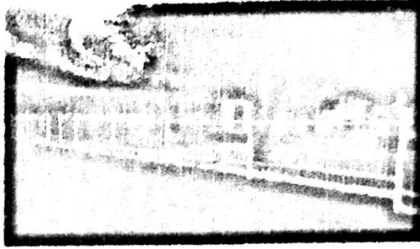
When a boundary fence needs repair, both property owners must share the cost; however, I am willing to pay for the materials and the installation as outlined in the above paragraphs. Please respond in writing if you have alternative suggestions. I will wait 14 days before proceeding.

Thank you for your time and consideration.

Sincerely,

Lynelle Gae

## Decorative Wire Loop Fencing - 20 ft Roll x 50" tall - Single Loop



[Click to Enlarge](#)

Availability:	In Stock
Item #	20x50gs
Reg. Price:	\$169.95
Quantity	<input type="text" value="1"/>

Description

Related

More Images

Shipping

Customer Ratings

Decorative Wire Loop Fencing - 20 ft Roll x 50" tall - Single Loop

Single Loop Decorative Wire Fencing makes the perimeter of your yard retro-looking like old double loop wire fencing. In 2015, double loop (11-gauge) wire fencing product lines were discontinued. We're bringing in a premium single loop (8-gauge) wire fencing with the same classic look, yet 25 percent thicker.

Check out our other listings for different sizes and gates. This listing is for a 20' length x 50" tall and we will ship it in an unfinished galvanized metal surface.

*A Rustic Garden*

Questions? Call Today at 217.773.3778

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[3' Tall Wrought Iron Fencing & Gates](#)

[4' Tall Wrought Iron Fencing & Gates](#)

[5' Tall Wrought Iron Fencing and Gates](#)

[6' Tall Wrought Iron Fencing & Gates](#)

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[Relic Iron Fencing Gates - American Iron Fence](#)

[Lexington Double Wrought Iron Driveway Gates](#)

[Fence & Outdoor Gate Hardware - Wrought Iron Fencing](#)

[Wrought Iron Garden Border Fencing - 12 Styles](#)

[Wire Fencing & Gates](#)

[Galvanized Ornamental Looped Top Wire Fence - Vintage Style](#)

[Ornamental Wire Single Loop Fence Gates](#)

[Double Loop Wire Gates](#)

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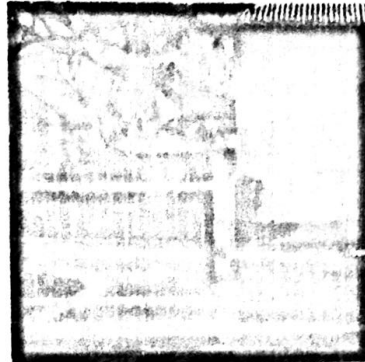
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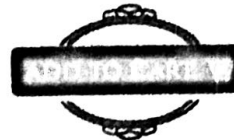
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## Vintage Style Looped Wire Woven Fence - 20' long x 50" tall



[+ Enlarge Image](#)

Item # 20ftrollx4ftwirefence  
Regular price: \$209.95  
Qty 1



[Share This](#) [Facebook](#) [Tweet](#) [Pinterest](#) [Email](#)



[Description](#) [Shipping](#) [Video](#) [Related](#)

We offer our 50" tall woven wire vintage style metal fence in 20' increments. This looped top fencing looks like the perimeter yard fence that was popular in the middle of the 1900's. What a great purchase to have this economical functional easy to install fencing to keep your children and animals safe.

The surface will be unfinished galvanized metal now being made in the stronger 8 gauge wire. See the last picture to show you our improved fencing. Available for May delivery.

### You May Also Like



**Galvanized Ornamental Vintage Style Looped Wire Fence - 3' t - 100' Roll**  
\$666.95



**Galvanized Vintage Ornamental Looped Fence - 4' t - 100' roll**  
\$646.95



**Vintage Style Wire Looped Fence - 120' Roll x 50" tall**  
\$1,108.95



### Featured Item

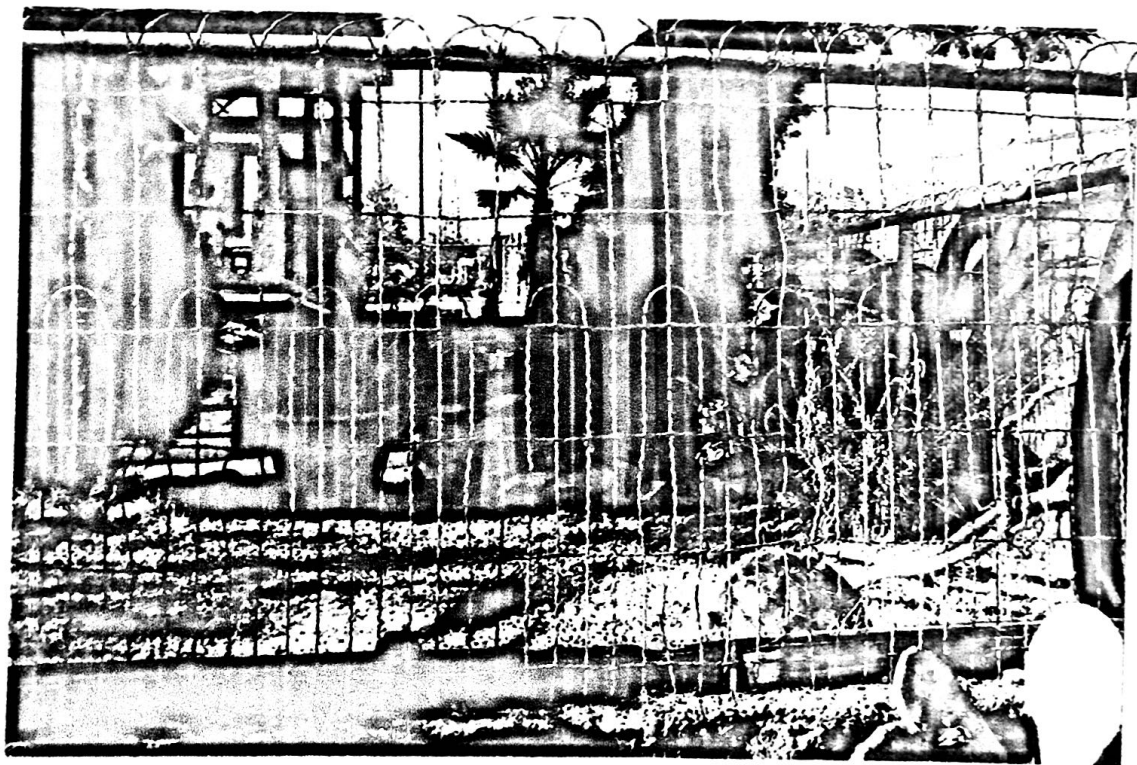
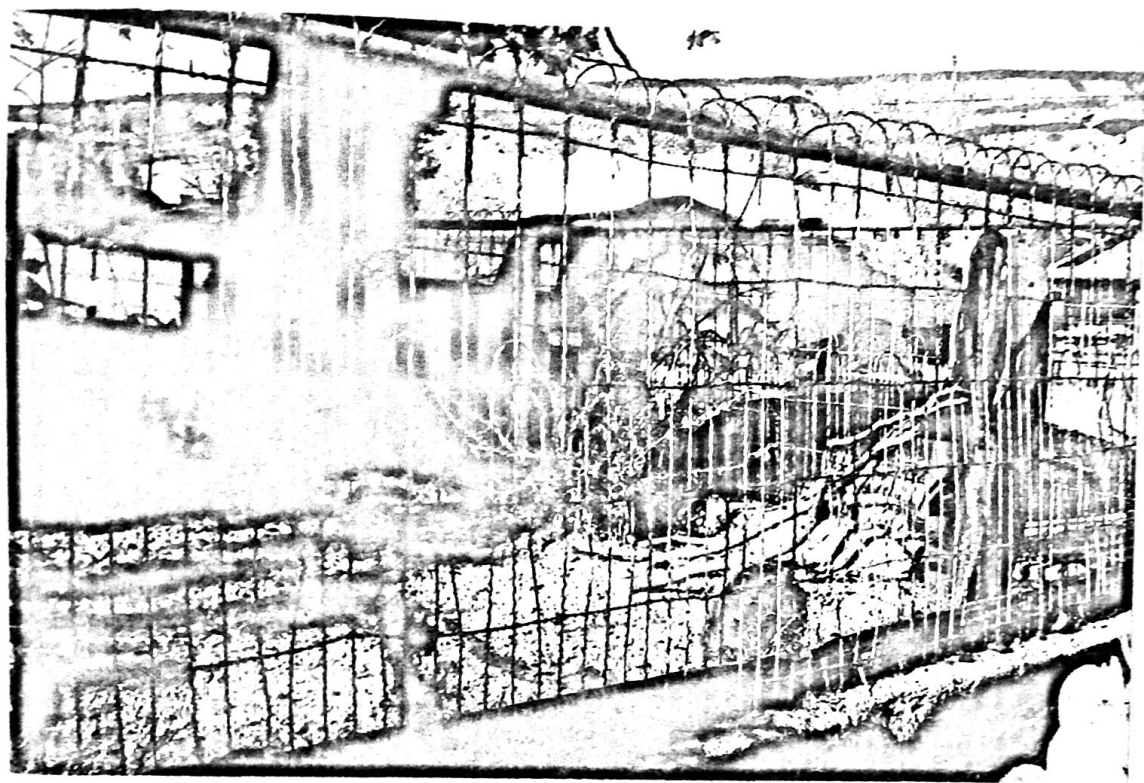


**Cross And Curl Victorian Metal Arbor 50" w x 90" t**  
\$359.95

### Recently Viewed Items

*American Iron Fence*







# **EXHIBIT B**

March 8<sup>th</sup>, 2018

In response to your proposal dated February 26, 2018, I am in an agreement to allowing you to repair the original wire fencing that extends 79 Feet from the front property line toward the back property line to the broken part which extends 20 feet to the back of the property line.

Please provide me with 14 days notice prior to installation of the fencing so I can remove any and all objects.

I have enclosed the fencing fact sheet that I would like to have installed.

Thank you,  
Yolanda P. Moots

COPY

Questions? Call Today at 217.773.3778

[Search Site...](#)

[Home](#) > [Wire Fencing & Gates](#) > [Galvanized Ornamental Looped Top Wire Fence - Vintage Style](#) > [Vintage Style Looped Wire Woven Fence - 20' long x 50" tall](#)

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## Vintage Style Looped Wire Woven Fence - 20' long x 50" tall



Item # 20ftrollx4ftwirefence

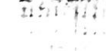
Regular price: \$209.95

Qty 1



[Share This](#) [Facebook](#) [Tweet](#) [Pinterest](#) [Email](#)

[+ Enlarge Image](#)



[Description](#) [Shipping](#) [Video](#) [Related](#)

We offer our 50" tall woven wire vintage style metal fence in 20' increments. This looped top fencing looks like the perimeter yard fence that was popular in the middle of the 1900's. What a great purchase to have this economical functional easy to install fencing to keep your children and animals safe.

The surface will be unfinished galvanized metal now being made in the stronger 8 gauge wire. See the last picture to show you our improved fencing. Available for May delivery.

[You May Also Like](#)

*Preferable - 4pm.*

Featured Item



**Cross And Curl Victorian Metal Arbor 50" w x 90" t**  
\$359.95



**Galvanized Ornamental Vintage Style Looped Wire Fence - 3' t - 100' Roll**  
\$999.95

[DETAILS](#)



**Galvanized Vintage Ornamental Looped Fence - 4' t - 100' roll**  
\$949.95

[DETAILS](#)



**Vintage Style Wire Looped Fence - 120' Roll x 50" tall**  
\$1,109.95

[DETAILS](#)

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*American Iron Fence*

# **EXHIBIT C**

# Sales Receipt

## A Rustic Garden

American Iron Fence  
854 975N Ave  
Mount Sterling, IL 62353  
866.514.2733



**Ship To:** Lynelle Gae  
207 PITTSBURG AVE  
BISBEE, AZ 85603-1237 US  
lyngae@earthlink.net  
520-432-3912

**Order #** 2232  
**Date** 3/13/2018  
**User** lyngae@earthlink.net  
**Buyer** Lynelle Gae  
**Ship Date**

Prod SKU	Item	Description	Price	Qty	Ext. Price
20x50gs	20x50gs	20' x 4 ft tall Galvanized Loop Fence	\$209.95	1	\$209.95
					<b>Sub Total:</b> \$209.95
					<b>Shipping:</b> \$0.00
					<b>Total:</b> \$209.95

We Appreciate Your Business. Thank You For Your Order!



COPY

"Visit us online at [www.arusticgarden.com](http://www.arusticgarden.com)"

# **EXHIBIT D**

COPY



# Bisbee Police Department

Report for Incident B18-4097

**Nature:** CIVIL COMPLAINT  
**Location:** BSPD2

**Address:** 207 Pittsburg Ave  
Bisbee AZ 85603

**Offense Codes:** CI01

**Received By:** RBowie

**How Received:** 9

**Agency:** BSPD

**Responding Officers:** KMahoney BSPD, BSwan

**Responsible Officer:** KMahoney BSPD

**Disposition:** CLO 11/03/18

**When Reported:** 14:10:42 10/27/18

**Occurred Between:** 14:09:51 10/27/18 and 14:09:51 10/27/18

**Assigned To:**

**Detail:**

**Date Assigned:** \*\*/\*\*/\*\*

**Status:**

**Status Date:** \*\*/\*\*/\*\*

**Due Date:** \*\*/\*\*/\*\*

**Complainant:** 256542

**Last:** GAE

**First:** LYNELLE

**Mid:**

**Race:** W

**Sex:** F

**City:** Bisbee, AZ 85603

## Offense Codes

**Reported:** CI01 Civil complaint

**Observed:**

**Additional Offense:** CI01 Civil complaint

## Circumstances

NMOR Call Slip- non MOR

**Responding Officers:**

**Unit :**

KMahoney BSPD

P45

BSwan

S22

**Responsible Officer:** KMahoney BSPD

**Agency:** BSPD

**Received By:** RBowie

**Last Radio Log:** \*\*/\*\*/\*\* \*\*/\*\*/\*\*

**How Received:** 9 911 Line

**Clearance:** BRP Bisbee Report To Follow

**When Reported:** 14:10:42 10/27/18

**Disposition:** CLO Date: 11/03/18

**Judicial Status:**

**Occurred between:** 14:09:51 10/27/18

**Misc Entry:**

**and:** 14:09:51 10/27/18

**Modus Operandi:**

**Description :**

**Method :**

Day of Week

Preferred Day of Week

Saturday

## Involvements



---

Date	Type	Description	Relationship
11/03/18	Name	Moots, Yolanda P	Person Mentioned
11/03/18	Name	Moots, Richard	Person Mentioned
10/27/18	Name	GAE, LYNELLE	Complainant
10/27/18	Cad Call	14:10:42 10/27/18 CIVIL COMPLAINT	Initiating Call

## Narrative

BISBEE POLICE DEPARTMENT  
Narrative Report

### NARRATION:

On 10-27-18 at approximately 1410 hours, officers were dispatched to 207 Pittsburg Ave for a civil complaint.

Upon arrival, I spoke to Yolanda Moots and Richard Moots, who stated that they were working on the fence to cover a hole and their neighbor Lynelle Gae keeps pulling the repair apart. Mr. Moots stated that this is an ongoing problem and they take apart the fence to allow the cats to come through the fence.

I spoke to Lynelle Gae, who stated that every time they are saying they area repairing the fence, Mr. and Ms. Moots keep damaging the fence and her property. Ms. Gae stated that the wire fence is supposed to be a shared property line and they both have rights to the fence. Mr. Gae stated that the tin fence was one that she had installed six inches off the property line and Mr. Moots keeps damaging the tin.

Both parties were informed that the situation was a civil matter at this time and referred to the JPl Court. Nothing further to report.

Date, Time, Reporting Officer: Officer Mahoney, #2080, Patrol  
Date, Time, Reviewed By:

## Name Involvements:

Person121603

**Mentioned :**

**Last:** Moots

**First:** Richard

**Mid:**

**Race:**

**Sex:**

**City:** Bisbee, AZ 85603

Person107768

**Mentioned :**

**Last:** Moots

**First:** Yolanda

**Mid:** P

**Race:** L

**Sex:** F

**City:** Bisbee, AZ 85603

**Complainant :** 256542

**Last:** GAE

**First:** LYNELLE

**Mid:**

**Race:** W

**Sex:** F

**City:** Bisbee, AZ 85603

# **EXHIBIT E**

# **EXHIBIT F**

# **EXHIBIT G**

# BISBEE

## LAND SURVEYING

BISBEE SURVEYING.COM • (520) 366-6597  
221 Van Dyke Street, Bisbee, Arizona

# INVOICE

INVOICE #	DATE
1019	12/7/2018

BILL TO
Lynelle Gae 207 Pittsburg Avenue Bisbee, Arizona 85603

CUSTOMER ID	TERMS
2018-019	Due Upon Receipt

DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Record of Survey	-	-	\$2,300.00
	-	-	

Thank you for your business!

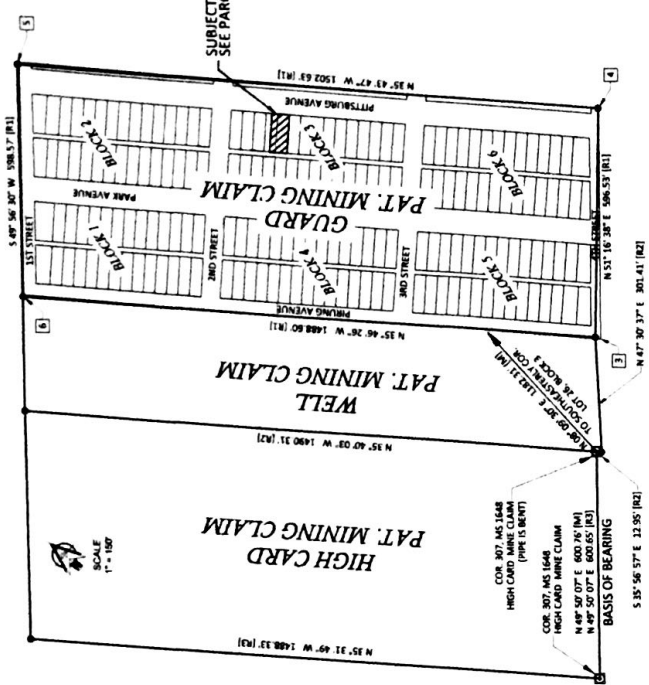
SUBTOTAL	\$2,300.00
PAID (30\$)	
TAX	
TOTAL DUE	\$

If you have any questions about this invoice, please contact us.

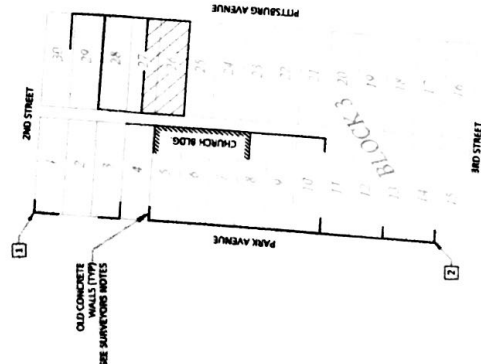


# **EXHIBIT H**

**BAKERVILLE TOWNSITE DETAIL [R1 - R3, R5]**



**SCALE: 1" = 60'**



1. IT IS MY PROFESSIONAL OPINION THAT THE LINES OF OCCUPATION AS SET FORTH BY THE ABOVE DESCRIBED MAPS ARE THE BEST REPRESENTATION OF THE LINES OF OCCUPATION WITHIN THE TOWNSHIP PERIMETER, CORNER CORNERS, AND CORNERS OF THE TOWNSHIP, BASED ON A VISUAL INSPECTION OF THE LINES OF OCCUPATION WITHIN THE TOWNSHIP PERIMETER, CORNER CORNERS, AND CORNERS OF THE SUBJECT PARCELS, MY METHODOLOGY TO ESTABLISH THE CORNERS OF THE SUBJECT PARCELS ARE AS FOLLOWS:
2. THE EXTERIOR DIMENSIONS OF THE BAKERVILLE TOWNSHIP [B5] DO NOT AGREE WITH THE DIMENSIONS OF THE GUARD PATENTED MINING CLAIM [M1], AS NOTED IN THE BAKERVILLE TOWNSHIP DETAIL MAPING CLAIM [M1], AS FOLLOWS:
3. I WAS UNABLE TO LOCATE ANY EXISTING MONUMENTS FOR THE TOWNSHIP PERIMETER, CORNER CORNERS, AND CORNERS OF THE TOWNSHIP BASED ON THE TOWNSHIP DETAIL MAPING CLAIM [M1].

THE BASIS OF BEARING FOR THIS SURVEY IS REFERENCED TO [R3] BEING  
N 49° 50' 07" E ALONG THE SOUTHEASTERLY BOUNDARY OF THE HIGH  
CARD PATENTED MINING CLAIM (MS 1648).

- 3 CALCULATED TOWNSHIP CORNER IS SOUTH 12.95° AND EAST 5.34° OF CALCULATED CLAIM CORNER.
- 4 CALCULATED TOWNSHIP CORNER IS SOUTH 1.57° AND EAST 0.51° OF CALCULATED CLAIM CORNER.
- 5 CALCULATED TOWNSHIP CORNER IS SOUTH 0.08° AND EAST 7.11° OF CALCULATED CLAIM CORNER.
- 6 CALCULATED TOWNSHIP CORNER IS SOUTH 0.59° AND EAST 4.68° OF CALCULATED CLAIM CORNER.

[061] PATENTED MINING CLAIMS - GUANO ISLAND  
BOOK 18 OF RECORDS OF FREEMONT MICHIGAN, COMPST QUEEN BRANCH, BUSEE, ANDROMA  
BOOK 14 OF RECORDS OF MINES, PAGE 33, COCHISE COUNTY RECORDS

[062] PATENTED MINING CLAIMS - WELL [1901]  
RECORDS OF FREEMONT MICHIGAN, COMPST QUEEN BRANCH, BUSEE, ANDROMA  
BOOK 20 OF DEEDS OF MINES, PAGES 25-31, COCHISE COUNTY RECORDS

[063] PATENTED MINING CLAIMS - HIGH CANYON [1882]  
RECORDS OF FREEMONT MICHIGAN, COMPST QUEEN BRANCH, BUSEE, ANDROMA  
BOOK 17 OF DEEDS OF MINES, PAGES 208-210, COCHISE COUNTY RECORDS

[064] SUBJECT DEED [2018]  
FILE NO. 2010-144  
RECORDS OF FREEMONT MICHIGAN, COMPST QUEEN BRANCH, BUSEE, ANDROMA

[065] MATERIALS TOWNSHIP [1894]  
BOOK 60 OF MAPS, PAGE 33, COCHISE COUNTY RECORDS AND  
BOOK 15 OF RECORDS OF MINES, PAGE 15, COCHISE COUNTY RECORDS  
SANDPOINT, IDAHO

THE SURFACE, TOGETHER WITH A DEPTH OF 40.00 FEET IMMEDIATELY BENEATH THE SURFACE OF LOT 26, AND THE SOUTHEASTERLY ONE-HALF OF LOT 27, BLOCK 3, BAKERVILLE TOWNSITE, ACCORDING TO BOOK 1 OF MAPS, PAGE 15, RECORDS OF COCHISE COUNTY, ARIZONA.

EXCEPT ALL LEADS, LODES, VEINS AND DEPOSITS OF ORE OR MINERAL BEARING ROCK OR EARTH AS RESERVED IN DEED RECORDED IN BOOK 34, DEEDS OF REAL ESTATE, PAGE 7 AND ON THE RECORDED PLAT OF SAID SUBDIVISION, RECORDS OF COCHISE COUNTY, ARIZONA.

LOT 26 AND A PORTION OF  
LOT 27 OF THE BAKERVILLE  
TOWNSITE, COCHISE  
COUNTY, ARIZONA.

DRAFTED BY	GMS	DATE	12/03/2018
FIELD BY	GMS	JCM NO.	NCLB-029
REVISION NO.	N/A	SHEET NO.	1 OF 1

221 VAN DYKE STREET • BISBEE • ARIZONA • 85603  
WWW.BISBEE SURVEYING.COM • (520) 366-1211

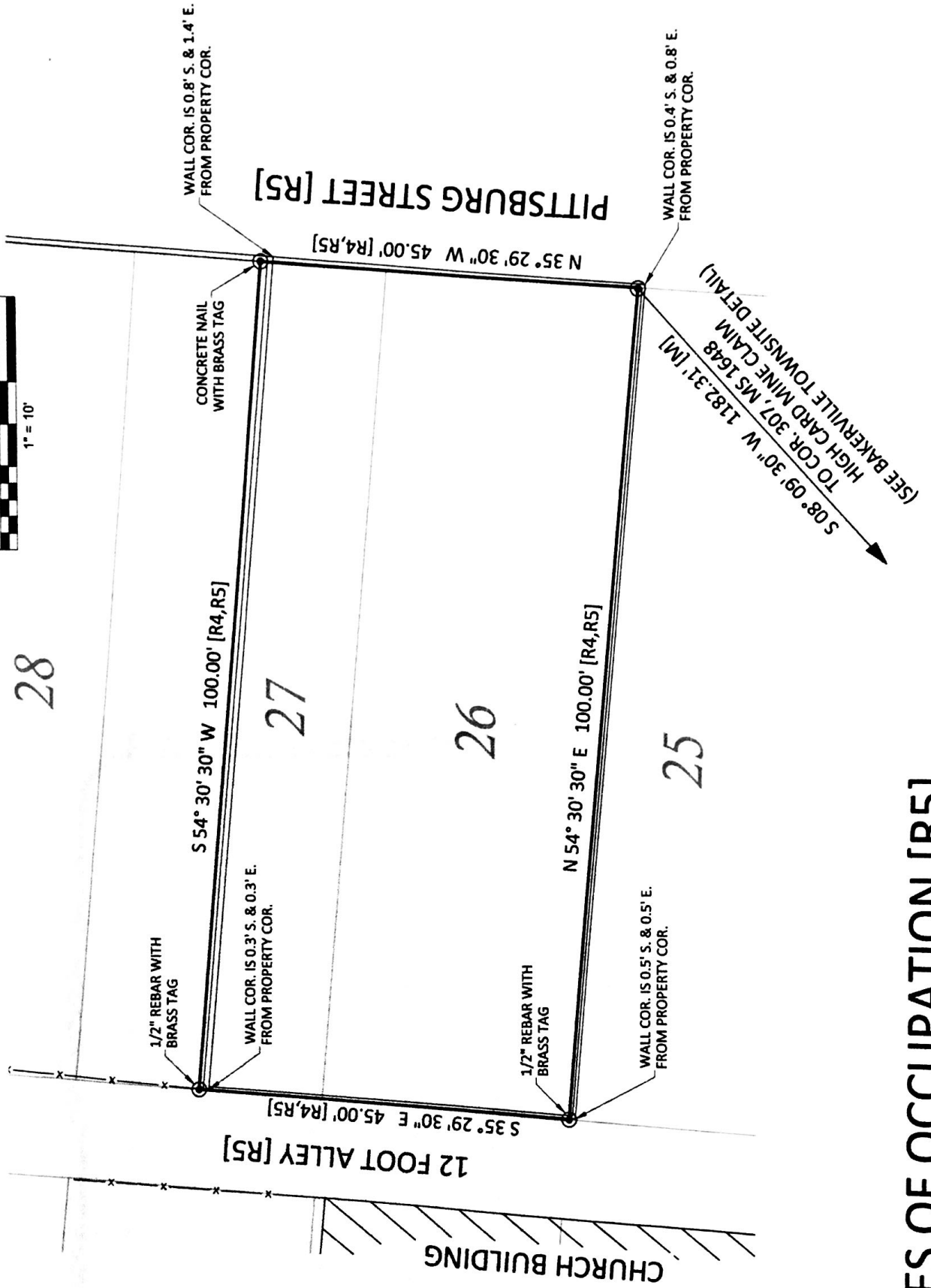
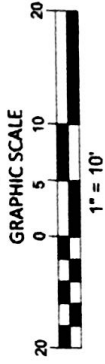
I, GLEN M. SUMMERS, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA; THAT THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THAT IT ACCURATELY DEPICTS THAT SURVEY; THAT THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AND THAT THEIR POSITIONS ARE SUFFICIENT FOR THE SURVEY TO BE RETRACTED.



# **EXHIBIT I**

# **EXHIBIT J**

# PARCEL DETAIL [R4, R5]



# LINES OF OCCUPATION [R5]

SCALE: 1" = 60'

SURVEYORS NOTES